

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

2019 JUL 15 P 3:51
Grand Jury N-18-1

U.S. DISTRICT COURT
NEW HAVEN, CT

UNITED STATES OF AMERICA

CRIMINAL NO. 3:19 cr 121-VLB

v.

TONY TUAN PHAM,
a.k.a. "Anh Nguyen,"
SAMUEL COPENHAVER, and
CONSTANCE MOERLAND

VIOLATIONS:
18 U.S.C. § 371 (Conspiracy)
18 U.S.C. § 1343 (Wire Fraud)

INDICTMENT

The Grand Jury charges:

COUNT ONE
(Conspiracy)

1. At all relevant times, the Residential Drug Abuse Program ("RDAP") was a substance abuse treatment program that was administered by the Federal Bureau of Prisons ("BOP"), a subdivision of the United States Department of Justice. In order to gain admission to the RDAP, an inmate had to meet certain criteria, including having a diagnosable and verifiable drug or alcohol abuse disorder. By successfully completing the RDAP, an inmate could qualify for up to 12 months' early release from custody.

2. The BOP spent thousands of dollars per inmate to administer the RDAP, including on staff salaries, inmate screening, counseling, and other programmatic costs.

3. From in or about September 2012 through the date of this Indictment, the exact dates being unknown to the Grand Jury, in the District of Connecticut and elsewhere, the defendants, TONY TUAN PHAM, also known as "Anh Nguyen," SAMUEL COPENHAVER, and CONSTANCE MOERLAND (collectively, the "Defendants"), and others known and unknown to the Grand Jury, did unlawfully, knowingly, and intentionally combine, conspire,

confederate, and agree with each other to commit certain offenses against the United States, namely:

a. False statements, that is, willfully and knowingly making materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the BOP, a department or agency of the United States, in violation of Title 18, United States Code, Section 1001; and

b. Wire fraud, that is, knowingly and with the intent to defraud, having devised a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, transmitting and causing to be transmitted writings, signals, and sounds by means of wire communication in interstate and foreign commerce for the purpose of executing the scheme and artifice to defraud, in violation of Title 18, United States Code, Section 1343.

Purpose of the Conspiracy

4. The purpose of the conspiracy was to defraud the BOP and to obtain money and things of value for the Defendants and their co-conspirators by among other ways, assisting, for a fee, prospective and current federal inmates who did not have substance abuse disorders and who did not require substance abuse treatment, to fraudulently gain admission to the RDAP at various BOP facilities around the United States, and thus to deceive the BOP; deprive the BOP of information that could impact its economic decisions, including with respect to screening and selecting inmates for admission to the RDAP; and cause the BOP to expend unnecessarily funds on providing substance abuse treatment to inmates who did not need or qualify for such treatment.

Manner and Means of the Conspiracy

5. The manner and means by which the Defendants and their co-conspirators sought to accomplish and did accomplish the purpose of the conspiracy included the following:

6. The Defendants were managing partners of RDAP Law Consultants, LLC (“RDAP Law Consultants”), a company that operated out of locations in Ohio and Michigan between in or about September 2012 and the date of this Indictment.

7. On behalf of RDAP Law Consultants, the Defendants solicited, on a contingency fee basis, prospective and current federal inmates through interstate telephone calls and emails with offers of assistance in applying to, and qualifying for, the RDAP. The Defendant’s pitch was reflected on the website of RDAP Law Consultants, which stated in relevant part:

[W]e assist you to document and qualify for eligibility and admissions to the Bureau of Prison’s 500-hour Residential Drug Abuse Treatment Program (RDAP), reducing your prison time by up to 18 months (12 months direct sentence reduction and 6 months halfway house and home confinement). We are so confident in our services that for most cases, we will provide you with a performance guarantee: there is a fee only if you are admitted into the RDAP program! Your success is the only way for our success.

8. If a prospective or current inmate became a client of RDAP Law Consultants, the Defendants coached and advised the client through interstate telephone and video calls, text messages, emails, and in-person meetings on how to gain admission to the RDAP, including by making materially false representations to the BOP about the existence, duration, and extent of a purported qualifying substance abuse disorder.

9. If a client denied a history of alcohol abuse, the Defendants instructed the client to falsely inform the BOP that, among other things, the client: (a) was a frequent or daily user of alcohol; (b) had tried unsuccessfully to quit drinking alcohol; (c) suffered from withdrawal symptoms if the client did not drink alcohol; and (d) had abused alcohol in ways that adversely

affected the client's personal and professional life and, in particular, contributed to the client's conviction.

10. The Defendants directed the clients to fraudulently obtain one or more prescriptions for medications used to treat withdrawal symptoms, and to bring such medications upon reporting to a BOP facility to begin serving their term of imprisonment, thus creating and substantiating the false appearance of a substance abuse disorder.

11. The Defendants also educated clients about how to falsely and fraudulently mimic withdrawal symptoms.

12. The Defendants also instructed clients who were not yet in custody to adopt a daily habit of drinking alcohol or to have a medical professional provide a prescription for anti-anxiety medication prior to the client reporting to a BOP facility.

13. The Defendants also directed clients to consume alcohol immediately before reporting to a BOP facility to begin serving a term of imprisonment.

14. The Defendants charged a fee for their services that typically averaged several thousand dollars. Often, a client had the option of paying a discounted upfront fee purportedly to be refunded if the client were denied admission to the RDAP, or depositing the fee into an escrow account to be released to RDAP Law Consultants only if the client were to be admitted to the RDAP.

15. In order to conceal his true identity, PHAM used the name "Anh Nguyen" during his dealings with clients of RDAP Law Consultants.

Overt Acts

16. In furtherance of the conspiracy and to effect its unlawful objects, the Defendants and their co-conspirators committed and caused to be committed, in the District of Connecticut and elsewhere, the following overt acts, among others:

17. On or about August 28, 2017, MOERLAND mailed an unsolicited letter to a cooperating witness ("CW-1") who was a resident of West Virginia and had been sentenced to 60 months of imprisonment following a federal felony conviction, but had not yet reported to a BOP facility. In the letter, MOERLAND requested that CW-1 contact her "to discuss the sentence reduction program" and stated that CW-1 "can get up to 12 months off from your sentence."

18. On or about October 2, 2017, MOERLAND emailed CW-1 materials about the RDAP and RDAP Law Consultants. In the cover email, MOERLAND stated: "Mr. Nguyen has done this well over 300 times now." MOERLAND also stated: "Our clients receive an average 18 month reduction from the initial judge ordered sentence. We take pride in our 91% success rate for clients accepted into the RDAP and Second Change program, where the success rate for those who do not utilize our service is less than 10%."

19. On or about December 29, 2017, MOERLAND and PHAM spoke on the telephone with CW-1. During the call, CW-1 denied any history of substance abuse, and MOERLAND stated that "we absolutely can" still help CW-1 gain admission to the RDAP. MOERLAND went on to state, in substance: "What we would want to do because you don't have anything that's needed to get into the program right now, . . . what we would want to do is have you become a client immediately." PHAM then stated, in substance: "The way we get you into this program is, there's a saying, it goes like this: if you walk like a duck and you quack like a duck, what are they gonna say? . . . You're a duck! You're a duck!" PHAM further stated, in substance: "There are six things

the BOP want you to say. We're gonna make sure you say it correctly and honestly. We practice your story. Then after that, we have licensed substance abuse counselor to work with you. . . They're not going to lie for you or for me. But you are going to say all the correct things, you're gonna say all the right things, and when they're done, they're going to diagnose you and they're going to write a nice report."

20. Also on or about December 29, 2017, MOERLAND emailed PHAM about CW-1's interest in RDAP Law Consultants' services. In the email, MOERLAND stated, in part, that CW-1's "[s]ubstance abuse history is sketchy. Will need comprehensive documentation via our staff counselor."

21. On or about January 2, 2018, PHAM sent an email to CW-1 requesting a copy of CW-1's presentence report ("PSR").

22. On or about January 3, 2018, after reviewing CW-1's PSR, which disclosed that CW-1 denied any history of substance abuse, PHAM emailed CW-1, copying MOERLAND: "I have reviewed your PSR and know exactly what we are up against. We will be moving to the next steps soon."

23. On or about January 4, 2018, PHAM and an uncharged co-conspirator who also was an employee of RDAP Law Consultants ("UCC-1") spoke on the telephone with CW-1. During the call, PHAM instructed CW-1, in part and in substance:

There are six things the Bureau of Prisons wants you to say. Six. [UCC-1] is going to send you an email on these six things. . . . Once you know these six things . . . you need to practice your story. Practice your story.

Here are the six things. Number one, you drink every day, including weekdays. . . . Number two, alcohol is very important to you. It's a big part of your life. . . . Three, you're a good drinker now. . . . Your first glass of wine you don't feel anything. . . . Number four, you've tried to quit many times and you can't. . . . You get sick if you don't drink, you don't feel like yourself. Ok? You can't sleep. You can't think. Like an alcoholic, like an addict. You don't feel good unless you have a drink.

That's five. And number six, it's called abuse. Abuse meaning bad things. Ok? You do bad things when you drink.

24. Later on or about January 4, 2018, UCC-1 sent CW-1 an email with the subject line "6 things," stating, in part and in substance, "the 6 things that you want to know about yourself to say in the interviews and assessments."

25. Also on or about January 4, 2018, UCC-1 sent CW-1 an email with the subject line "Doctor Visit." In relevant part, the email stated:

Please go to your doctor and tell him the following:

- 1) You have been drinking everyday for a very long time and are an alcoholic.
- 2) You will be going to prison and are scared that they are going to make you stop drinking cold-turkey. Your attorney told you that you need to walk in there with some prescriptions or the prison will ignore your medical needs since it is so crowded in there. Tell the doc you don't want to suffer.
- 3) Ask the doctor to please give you a prescription for "Librium" or "Ativan" or "Naltrexone" OR ANYTHING else he feels appropriate to help with the withdrawal. Also ask for "Thiamine", which is a vitamin Thiamine is the one that is very important to get. They will not allow non-prescription pills into prison so buying it over the counter is useless (ie. it has to be a prescription). Let me know when you get this. Please fill it immediately. You will be carrying and walking into prison with the bottle of pills...remember to bring them.

26. On or about January 8, 2018, PHAM spoke on the telephone with CW-1. During the call, PHAM stated, in part and in substance:

If you walk in there and you say, you know what, I don't do any drugs. I don't do, I don't use any prescription drugs, street drugs, and I don't drink at all. They're gonna say, well, then there's no way you can get in this program. . . . You can't be honest. You can't be honest about it. If you're honest about it, you're not getting in this program.

27. On or about January 9, 2018, PHAM sent CW-1 an email with the subject line "Must Show Withdrawal Symptoms," in which PHAM stated: "You need to show serious withdrawal symptoms as soon as you get to prison." PHAM also included links to two videos available on the Internet and instructed CW-1 to "watch these videos. You will be doing this in

some degree.” One of the videos depicted a person going through, and displaying symptoms of, withdrawal.

28. On or about January 9, 2018, in a separate email to CW-1 with the subject line “Prison Preparation To-Do’s,” PHAM stated, in part:

These are our talking points on the phone soon. Please print this email out and take with you.

Please throw it away before walking into prison.

Please remember to bring the bottle and pills with you.

- 1) What to Bring: your prescriptions, some cash, your eyeglasses
- 2) Drink 15 minutes before arriving and get prison doc to give you any meds for withdrawal using the 1-2-3 method (ask me to explain what that is). Tell them “I abuse alcohol everyday.. My doc gave me these meds because he’s afraid I may get a seizure and die or get brain damage. I am really scared. I need the meds. Please help me!”
 - Never say that you have anxiety or depression. They will treat you for that and you will fail. I lost two clients because of this.
 - Take the medication that they give you ! Refusing would mean that you do not have a problem!
- 3) When asked about symptoms, ALWAYS complain that you have them. Never say I am doing better EVER even after several months! They will use it against you that you are not really an alcoholic.
- 4) Don’t try to apply or ask too many questions for at least two weeks...remember you are suppose to be sick these two weeks.
 - Start to go to Alcohol Anonymous and/or Narcotic Anonymous classes right away.
- 5) Dealing with staff..they don’t care about you. Look and act stupid, like a loser, and don’t ask too many smart questions. Notice how these men are all stupid looking. You want to be one of them. Act dumb and clueless about the RDAP program always. Never challenge prison staff or they will get you and make it so hard! Always, “Yes Sir”.
- 6) Communications: we will communicate through your family. NEVER EVER communicate about RDAP through email but instead only by phone or visitation. If by phone, talk about RDAP near the end of the call. All communication is through your one family member (wife?). My new name is

“ONLINE RESEARCH”. So, when referring to me, your family should say, based on my online research, you should do “X” next. Do not talk about refunds or failures over the phone. . . . There may be long periods of time where you have not heard directly from me...however we are always working and we are the ones that got you in.

29. On or about May 15, 2018, COPENHAVER sent an unsolicited email to another cooperating witness (“CW-2”) who was a resident of Connecticut and had been convicted of two federal felonies but had not yet been sentenced at the time. In the email, COPENHAVER stated that he was “trying to get in touch with you about an opportunity to explore early release programs offered in the BOP, should your case go that direction.”

30. On or about July 27, 2018, COPENHAVER emailed CW-2, copying PHAM. In the email (which was substantially similar to the email MOERLAND sent CW-1 on or about October 2, 2017), COPENHAVER stated: “Our clients receive an average 18 month reduction from the initial judge ordered sentence. We take pride in our 91% success rate for clients accepted into the RDAP program, whereas the success rate for those who do not utilize our service is less than 10%.” Attached to COPENHAVER’s email was a draft consulting agreement that outlined RDAP Law Consultants’ fee structure: “Client will pay \$6,500.00 into escrow account of client’s choosing with funds released to Company only upon successful admissions into RDAP. Alternatively, Client may choose to pay Company upfront the discounted fee of \$5,000.00.”

31. Also on or about July 27, 2018, COPENHAVER spoke on the telephone with CW-2. During the call, COPENHAVER stated that RDAP Law Consultants monitored federal court dockets nationwide to identify prospective clients. After CW-2 denied having a substance abuse disorder, COPENHAVER stated: “As long as you’re able to follow instructions and you’re a willing participant, everything will be A-OK.” During that call, COPENHAVER also stated that he wanted to introduce CW-2 to his “partner,” whom COPENHAVER identified as “Anh

Nguyen.” COPENHAVER then connected PHAM to the call, who described to CW-2 the services provided by RDAP Law Consultants.

32. On or about July 31, 2018, COPENHAVER again spoke on the telephone with CW-2. During the call, CW-2 denied having a substance abuse disorder, but COPENHAVER stated, in part and in substance:

I got it, I hear you. As long as you know how to follow instructions. Let Ahn take the lead on this. He is a good man. He’s a good guy, he’s smart, he’s got a good team working with him. So, I mean, just let him take the lead on this and just follow instructions, and everything will be just fine.

33. On or about July 31, 2018, COPENHAVER sent an email to PHAM, copying CW-2. In the email, COPENHAVER stated, in part, that CW-2 was “moving forward with our services” and noted: “Substance abuse history is nonexistent. Needs comprehensive documentation via our staff counselor.”

34. On or about August 1, 2018, PHAM spoke on the telephone with CW-2. During the call, CW-2 denied a substance abuse disorder, and PHAM advised, in part and in substance, to begin drinking alcohol before surrendering to a BOP facility:

[I]t’s very unusual to see a man who may be going to prison to not be at least doing something. At least taking some pills to calm their nerves, or having a glass of wine or two a night to help them with the stress. You had just said me told me that you’re stressed out. It would be worth doing something to help calm your nerves.

And it would be beneficial for RDAP if you drank now and then. That’s all. And I think it’ll help you. . . . [Y]ou get to decide, but it would be beneficial for you health-wise, stress-wise, and RDAP-wise, if you were drinking a glass of wine every night or two, and some of wine is very delicious. I like wine coolers myself.

They’re not looking for quantity. They’re – and you know, whether you drink one wine cooler or ten wine coolers a night, nobody knows. You’re sitting in your own house, who’s going to know? There’s no recording.

All I’m saying is I would prefer you not have to say that you drink every day when you really don’t. So you can remedy that. And it’s good for your health.

I'm not going to tell you to do anything. So so you need to reflect and I don't know. And I'll go over the secret to RDAP, you need to reflect on it. If you're ready to say, you gotta be ready to say that you have a drinking problem. If you're ready to do that, I'll help you tell your story of having a drinking problem. And that because of your drinking, it clouded your judgement sometimes, you know?

35. On or about August 7, 2018, PHAM spoke on the telephone with CW-2. During the call, after CW-2 again denied a substance abuse disorder, Pham stated:

Okay, so we are at a crossroad, and the crossroad, . . . is that you have to be using alcohol or a drug before you can have a problem. Right?

If you're chemical free when you walk into prison, and if that's what you tell them, you can't get in the program. There's no way around it.

You've got to use. And it's not hard. I've had guys get in for Benadryl they buy off the shelf. You know, they have a hard time, they have allergies, they can't sleep unless they take some Benadryls. I have guys that have been taking Benadryl for a long time. I've had people get in for um other over the counter, you know, sleep meds that they buy over the counter. That works too. But it has to be some sort of chemical – chemical is alcohol as well.

Your PSR is done, I see it here. So that's kind of set in stone in a way. We can get you in. . . . But you need to kind of help me figure out how to, you know, get you lined up for that.

And here comes the secret to RDAP. Here's the secret. You know what, Doc? I blame alcohol as one of the main reasons why I'm in prison with you today. If I wasn't drinking every day, I would be thinking more clearly and I would figure, what I was doing was a big – I'd be scared. If I wasn't drinking, I would've been thinking more clearly, I would have been scared that what I was doing would put me in prison. I wouldn't have done it.

The secret is you've got to blame the drugs or you've got to blame the alcohol.

It's about drinking maybe a beer, a couple of beers, or a glass of wine or two. That's it. You know, but you were doing it consistently. Or or you're using prescription drugs consistently or you're using Benadryl off the shelf consistently. Something consistently.

In prison, everybody is saying what they need to say to get into this program. Everybody.

Everybody's saying, and I know guys who say, yeah I've been smoking weed since I was five. I know that's a lie, who smokes weed at five?

But people, you'll blend in with everybody else trying to get in. Except that you're going to be well prepped. Okay? You're going to be well prepped, you're going to have the documentation, you'll be alright.

36. Also on or about August 7, 2018, Pham sent CW-2 an email with the subject line "6 things" (which was substantially similar to the email UCC-1 sent CW-1 on or about January 4, 2018). In the email, PHAM stated, in part:

Below are the 6 things you want to be able to say based on your history. At the interviews, make sure you don't say anything to go against these six things by accident.

Remember the secret to this program was that we were using everyday even prior to your arrest on this case and it clouded your judgment and is a big reason why you have this case now.

These are the 6 things the substance abuse counselor and rdap doctor wants you to say for sure. Never go against these six things while in the interview. They will ask you stories about your life and drinks and pills, what you took, when, and why so be ready to tell your true life story with the substances. We will discuss together before your interview.

- 1) Frequent user (daily) - Story of your daily use
- 2) Life revolves around alcohol/pills - examples of stories here - such as inventory stocking up and daily personal and business activities
- 3) Increased tolerance - stories you use more and more over the years to get the same effect
- 4) Failure to quit - tried many times but unsuccessful - too hard
- 5) Have withdrawal symptoms - can't sleep unless used alcohol/pills, stressed out and agitated until using
- 6) Abuse in a) personal, b) business, c) criminal
 - a) personal - family mad that you use all the time, waste so much money, driving under influence
 - b) business - got to work late, left early to get to go use

c) criminal - alcohol/pills contributed to me committing my crime since it clouded my judgment and I thought I can get away with it (liquid courage)

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH NINE
(Wire Fraud)

The Scheme and Artifice to Defraud

37. Paragraphs 1 through 36 are incorporated by reference.

38. From in or about September 2012 through the date of this Indictment, the exact dates being unknown to the Grand Jury, in the District of Connecticut and elsewhere, PHAM and COPENHAVER, together with others known and unknown to the Grand Jury, knowingly and with the intent to defraud, devised a scheme and artifice to defraud the BOP in order to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, to wit, by assisting, for a fee, prospective and current federal inmates who did not have substance abuse disorders and did not require substance abuse treatment to fraudulently gain admission to the RDAP at various BOP facilities around the United States, as described above.

Executions of the Scheme and Artifice to Defraud

39. On or about the dates listed below, in the District of Connecticut and elsewhere, for the purpose of executing the above-described scheme and artifice to defraud, PHAM and COPENHAVER, together with others known and unknown to the Grand Jury, knowingly caused to be transmitted in interstate commerce by means of wire communications certain writings, signals, and sounds, each constituting a separate count of this Indictment, as follows:

<u>Count</u>	<u>Approx. Date</u>	<u>Description of Interstate Wire</u>
2	5/15/2018	Email from COPENHAVER, outside Connecticut, to CW-2, in Connecticut.
3	7/27/2018	Email from COPENHAVER, outside Connecticut, to CW-2, in Connecticut.
4	7/27/2018	Call between COPENHAVER and PHAM, both outside Connecticut, and CW-2, in Connecticut.
5	7/31/2018	Call between COPENHAVER, outside Connecticut, and CW-2, in Connecticut.
6	7/31/2018	Email from COPENHAVER, outside Connecticut, to CW-2, in Connecticut.
7	8/1/2018	Call between PHAM, outside Connecticut, and CW-2, in Connecticut.
8	8/7/2018	Call between PHAM, outside Connecticut, and CW-2, in Connecticut.
9	8/7/2018	Email from PHAM, outside Connecticut, to CW-2, in Connecticut.

All in violation of Title 18, United States Code, Section 1343.

FORFEITURE ALLEGATION

40. Upon conviction of one or more of the offenses alleged in Counts Two through Nine of this Indictment, each of PHAM and COPENHAVER shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all right, title, and interest in any and all property, real or personal, which constitutes or is derived from proceeds traceable to such offense(s), including but not limited to the following assets:

- a. All funds in an account at Northpointe Bank with an account number ending in 1691 held in the name of P.P. and M.P., whose identities are known to the Grand Jury;


- b. All funds in an account at Wells Fargo Bank with an account number ending in 5911 held in the name of Community Management Services, Inc.;
- c. All funds in an account at KeyBank with an account number ending in 8493 held in the name of CMS, Inc.;
- d. All funds in an account at Citizens Bank with an account number ending in 2437 held in the name of Honest Startups, Inc.; and
- e. All funds in an account at Citizens Bank with an account number ending in 3069 held in the name of Honest Startups, Inc.

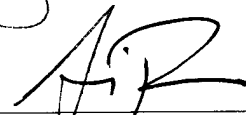
41. If any of the above-described forfeitable property, as a result of any act or omission of PHAM and COPENHAVER, cannot be located upon the exercise of due diligence, has been transferred, sold to, or deposited with a third party, has been placed beyond the jurisdiction of the court, has been substantially diminished in value, or has been commingled with other property which cannot be divided without difficulty, it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of PHAM and COPENHAVER up to the value of the forfeitable property described above.

All in accordance with Title 18, United States Code, Section 981(a)(1), as incorporated
by Title 28, United States Code, Section 2461(c), and Rule 32.2(a) of the Federal Rules of
Criminal Procedure.

A TRUE BILL


FOREPERSON


JOHN H. DURHAM
UNITED STATES ATTORNEY


AVI M. PERRY
SPECIAL ASSISTANT UNITED STATES ATTORNEY